

(6)

FILED

U.S.C. § 1983

1 COMPLAINT BY A PRISONER UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

2 Name: L. Sermenio

(Last)

Larry

(First)

OCT 12 2016

A

(Middle initial)

3 Prisoner Number:

AMZ470

4 Institutional Address:

SATF F1A-3-1V, P.O. BOX 5244,
Concoran, CA 93212SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Larry A. Sermenio

(PR)CV16 # 5894

(Enter your full name.)

vs.

Oklahoma Dot. of Corrections et al.Debbie Aldridge, Warden,M.B.C.C. et al.

(Enter the full name(s) of the defendant(s) in this action.)

Case No.

(Provided by the clerk upon filing)

COMPLAINT UNDER THE

CIVIL RIGHTS ACT,

42 U.S.C. § 1983

+ Jury Trial Demanded EDL
+ Expedited Review Requested
+ Preliminary Injunction Requested
+ Monetary Damages Requested

I. Exhaustion of Administrative Remedies.

Note: You must exhaust available administrative remedies before your claim can go forward. The court will dismiss any unexhausted claims.

A. Place of present confinement SATFB. Is there a grievance procedure in this institution? YES NO C. If so, did you present the facts in your complaint for review through the grievance procedure? YES NO

D. If your answer is YES, list the appeal number and the date and result of the appeal at each level of review. If you did not pursue any available level of appeal, explain why.

1. Informal appeal: Was granted correspondence - see attached documents "Introduction," initial pages of each ground, and exhaustion section

1 2. First formal level: Same as "1"
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3
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5 3. Second formal level: Same as "1"
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8 4. Third formal level: Same as "1"
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E. Is the last level to which you appealed the highest level of appeal available to you?

YES NO Same as "1"

F. If you did not present your claim for review through the grievance procedure, explain why.

Same as "1"

II. Parties.

A. Write your name and present address. Do the same for additional plaintiffs, if any.

Larry A. Serrano, SATF F1A-3-1V, P.O. Box 5244,
Concordia, CA 93212

B. For each defendant, provide full name, official position and place of employment.

Joe M. Albaugh, Interim Director, Oklahoma Department of Corrections

Debbie Aldridge, Warden, Mabel Bassett Correctional Center, McLoud, OK

1 **III. Statement of Claim.**

2 State briefly the facts of your case. Be sure to describe how each defendant is involved
3 and to include dates, when possible. Do not give any legal arguments or cite any cases or
4 statutes. If you have more than one claim, each claim should be set forth in a separate
5 numbered paragraph.

6 See attached documents

7

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16 **IV. Relief.**

17 Your complaint must include a request for specific relief. State briefly exactly what you
18 want the court to do for you. Do not make legal arguments and do not cite any cases or
19 statutes.

20 See attached page "Prayer For Relief"

21

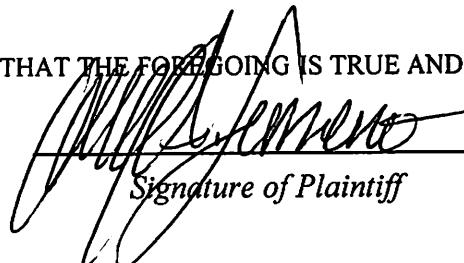
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23

24 I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

25 Executed on: 10/7/16

Date



Signature of Plaintiff

1
2 Prayer For Relief
3

4
5 Petitioner prays the Court;
6

7
8 (1) Enjoin defendants from utili-
9 zing the prison regulation
10 to deny legal and/or regular
11 correspondence
12

13
14 (2) Order defendants to bring the
15 prison regulation up to consti-
16 tutional standards
17

18 (3) Award attorney, and other
19 fees to plaintiff
20

21 (4) Declare what plaintiff's rights
22 are under the Constitution per-
23 taining to the issues raised in
24 this complaint
25

26 (5) Order telephonic appearances for
27 plaintiff for all hearings neces-
28 sary pursuant to 42 U.S.C. § 19-
97e(f)(2)

26
27 (6) Order expeditious review and pro-
28 ceedings up to trial unless oth-

Name: Larry A. Sermenno
 Address: SATF F1A-3-74
P.O. Box 5244
Concoran, CA 93212
 CDC or ID Number: AM2420

District Court of Oklahoma
County of Pottawatomie
 (Court)

Larry A. Sermenno et.al.
 Petitioner
Debbie Aldridge - Warden, Mabel Ba-
ssett Correctional Center et.al.
 Respondent

PETITION FOR WRIT OF HABEAS CORPUS

No. _____

(To be supplied by the Clerk of the Court)
Immediate Action Required
Evidentiary hearing Required

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.

- Read the entire form before answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are true and correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the superior court, you only need to file the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal and you are an attorney, file the original and 4 copies of the petition and, if separately bound, 1 set of any supporting documents (unless the court orders otherwise by local rule or in a specific case). If you are filing this petition in the Court of Appeal and you are *not* represented by an attorney, file the original and one set of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and 10 copies of the petition and, if separately bound, an original and 2 copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court (as amended effective January 1, 2007). Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

<input type="checkbox"/> A conviction	<input type="checkbox"/> Parole
<input type="checkbox"/> A sentence	<input type="checkbox"/> Credits
<input checked="" type="checkbox"/> Jail or prison conditions	<input type="checkbox"/> Prison discipline
<input type="checkbox"/> Other (specify): _____	

1. Your name: Larry A. Sermeno

2. Where are you incarcerated? SAF

3. Why are you in custody? Criminal conviction Civil commitment

Answer items a through i to the best of your ability.

a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

b. Penal or other code sections: _____

c. Name and location of sentencing or committing court:

Butte County Superior Court,
One Court Street, Oroville, CA 95916

d. Case number: CMD35385

e. Date convicted or committed: _____

f. Date sentenced: _____

g. Length of sentence: _____

h. When do you expect to be released? _____

i. Were you represented by counsel in the trial court? Yes No If yes, state the attorney's name and address:

4. What was the LAST plea you entered? (Check one):

Not guilty Guilty Nolo contendere Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

Jury Judge without a jury Submitted on transcript Awaiting trial

1 Introduction

2
3 Petitioner is currently litigating
4 in California, and was, at the time that
5 the issues in this petition arose. Petiti-
6 oner needed/needs legal advice and informa-
7 tion from Amber Hilberling, a woman
8 prisoner in the custody of the Okla-
9 homa Department of Corrections ("ODOC"). In
10 order to correspond with Ms. Hilberling, Petiti-
11 oner is required, under the California Code
12 of Regulations, Title 15, Division 3 ("15 C.C.R." / "Title
13 15"), to fill out a CDGR 1074 "Request for
14 Correspondence Approval" and send it to
15 his Correctional Counselor I ("CCI") for app-
16 oval, who will then approve or deny the
17 correspondence approval request and forward
18 it to his/her supervisor for review of
19 their decision to approve or deny the
20 correspondence request. Once a decision has
21 been made by their supervisor, they must
22 forward the correspondence approval request
23 to the institution where "Inmate #7" (the
24 intended recipient of mail) is housed, for
25 a supervisor to approve or deny the
26 correspondence request. If the supervisor app-
27 oves the request, both inmates can begin
28 sending mail to each other. If the re-

1 request is denied, in general, each inmate
2 must pursue the administrative appeal
3 process at their respective institutions.
4

5 In this particular case, Petitioner
6 was approved for correspondence with
7 Amber Hilberling by the California Depart-
8 ment of Corrections and Rehabilitation ("CD-
9 CR") and therein, his CCI and her superv-
10 isor at Correctional Training Facility ("CTF").
11 The Oklahoma institution where Ms. Hilb-
12 erling is housed denied the correspondence
13 approval request. Petitioner was denied on
14 the basis of "immediate family only," without
15 an accompanying rule, policy, regulation, or
16 other authority. Petitioner does not believe
17 that Ms. Hilberling filed an administrative
18 appeal at her institution, of the decision
19 to deny correspondence approval request. Nonethe-
20 less, Petitioner brings two Constitutional
21 issues surrounding the denial of the cor-
22 respondence approval request to this Court. If/
23 should the Court were to decide one or
24 both of the issues in Petitioner's favor,
25 it would void the decision of the ODOC
26 institution, and allow Petitioner correspondence
27 with Amber Hilberling, to satisfy the
28 First and 4th Amendments (U.S. Constitution).

Governing Standards

I.

Petitioner Has A Constitutional Right To Access To Courts, Petition The Government, and Communication By Way Of Prisoner Advice

The First Amendment rights of prisoners, as articulated by the United States Supreme Court, come in various forms. The relevant forms in this case are access to the courts, petition the government, and communication. Particularly in this case, is legal advice/information from a prisoner to present claimed violations of fundamental constitutional rights to the Courts. Under the High Court's precedents, Petitioner has a federal right to obtain legal advice/information from a prisoner to satisfy the First Amendment.

In Shaw v. Murphy (2001) 532 U.S. 223, 231 n.3, the High Court stated, "under our right-of-access precedents, inmates have a right to retain legal advice from other inmates... when it is necessary means for ensuring a reasonably adequate opportunity to present claimed violations of fundamental

1 constitutional rights to the courts." (quoting
2 Lewis v. Casey, 518 U.S. 343, at 350-51 (1996)
3 (quoting Bounds v. Smith 430 U.S. 817, at 825
4 (1977)).

5 In Johnson v. Avery (1968) 393 U.S.
6 483, the High Court made clear that pris-
7 oners have a right to assist each other
8 with legal drafting of documents for inmates
9 to exercise their rights to the access of
10 courts. The Court relied in part on Ex
11 Parte Hull (1941) 312 U.S. 546. It is clearly
12 established that petitioner has a fundamental
13 constitutional right to access the courts, pet-
14 ition the government, and communication by
15 way of legal advice/information from Ms.
16 Hilberling.*

II.

19 The Prison Regulation Denying Correspondence
20 Is Invalid Because It Is Not Reasonably Related To Legitimate Penological
21 Interests

25 In Turner v. Safley, 482 U.S. 78,
26 89-91, the United States Supreme Court
27 held that when a prison regulation
28 impinges on inmates' constitutional rights,

*Also see 15 C.C.R. §§ 3081.2(f), 3163, and 3270. Petitioner requests that the Court understand petitioner's presentation of the "governing standard" to be in alignment to the regulations cited above.

1 the regulation is valid if it is reason-
2 ably related to legitimate penological interests.
3 In determining the reasonableness of
4 a regulation, the Court cited four factors
5 to be considered.

6 First, there must be a valid, na-
7 tional connection between the prison regu-
8 lation and the legitimate governmental
9 interest put forward to justify it. The
10 logical connection must not be so rem-
11 oted as to render the policy arbitrary
12 or irrational. And, where First Amendment
13 rights are implicated, the governmental ob-
14 jective must avoid viewpoint discrimination.

15 Second, the reasonableness of the
16 prison regulation will be affected by whether
17 there are alternative means of ex-
18 ercising the right that remain open to
19 prison inmates. Greater deference will be ac-
20 corded officials when such alternatives are
21 available.

22 Third, the impact accommodation of
23 the asserted constitutional right will have
24 on guards and other inmates, and on
25 the allocation of prison resources generally,

1 should be taken into account. The ripple
2 effect on others may provide a dispositive
3 reason for sustaining administrative discretion.
4

5 Finally, the absence of ready
6 alternatives is evidence of the reasonableness
7 of that's a prison regulation. If the claim-
8 ant can articulate an alternative that
9 fully accommodates the prisoner's rights at
10 de minimis cost to valid penological inter-
11 ests, a Court may consider that as
12 evidence that the regulation does not sat-
13 ify the reasonable relationship standard.
14

15 III.

16 ODOC/MBCC Has /Have An Unconstitution-
17 al Policy/Practice/Custom/Procedure To Deny
18 Correspondence Approval Attributable To
19 The Director/Interim and The Warden
20

21 In order for a petitioner to
22 plead that a single incident of uncon-
23 stitutional activity violated a Federal Consti-
24 tutional right as a policy/practice/custom/
25 procedure, "proof of a single incident of
26 unconstitutional activity... under Monell...
27 includes proof that it was caused by
28

1 an existing, unconstitutional policy¹⁵ municipal
2 policy, which policy can be attributed to
3 a "municipal policymaker." City of Oklahoma
4 v. Tuttle (1983) 471 U.S. 808, 823-24; Also
5 see Monell v. New York City Dept. of Social
6 Services (1978) 436 U.S. 658.¹⁶

7
8 The unconstitutional policy that
9 petitioner alleges, is constitutionally deficient
10 in having a legitimate penological interest,
11 and equally protecting petitioner, Amber
12 Hilberling, and taxpayers, following within
13 Tuttle and Monell.

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¹⁵For precedent on allowing a petitioner to use civil rights/constitutional violations on habeas corpus, see: City of Boerne v. Flores (1997) 521 U.S. 507; Employee Retirement v. Smith (1990) 494 U.S. 872; Miller v. Reed (4th Cir. 1999) 176 F.3d 1202, 1207; Thomas v. Anchorage (9th Cir. 1999) 165 F.3d 1692, 1700 n.6 (hubris rights, mandates strict scrutiny); Also see Haywood v. Brown (2009) 173 Fed.2d 920,

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926 (State Courts are fully competent to adjudicate federal claims)

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "The trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page 4.)

For additional grounds, make copies of page 4 and number the additional grounds in order.)

DOC. / Debbie Aldridge-Warden Has An Unconstitutional Regulation of Denying Communication, Access To Court, and Right To Petition The Government In Violation of The First Amendment

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts on which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel, you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is, who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

On or around February 16th, 2016 Petitioner sent a "Request for Correspondence Approval" to his Correctional Counselor S. Dunaven, for approval to correspond with Amber Hilberling (O.D.O.C #67225D). On or around that day, correspondence was approved by Dunaven, and thereafter the facility Captain P. Santiago, The Deputy Warden of Mabel Bassett Correctional Center (MBC) denied correspondence approval citing "immediate family only," on March 8th, 2016. Petitioner brings this petition challenging the regulation as unconstitutional under the First Amendment,

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

Turner v. Safley (1987) 482 U.S. 78, 89; Shaw v. Murphy (2001) 532 U.S. 223; First Amendment (U.S. Const.) - Communication, Access To Court, Petition The Gov't Standard Minimum Rules For The Treatment Of Prisoners; Johnson v. Avery (1968) 393 U.S. 483; Ex parte Hall (1941) 312 U.S. 546; 18 U.S.C. § 2241-42

1 and within that, not satisfying the
2 prongs set in Turner v. Safely that
3 would satisfy the State's interests.

4
5 The Oklahoma Department of
6 Corrections, and Warden Debbie Aldridge have
7 no legitimate penological interest in denying
8 correspondence between Petitioner and Ms.
9 Amber Hilberling. There are no gang
10 affiliations between either of them, and
11 only allowing "immediate family" denies free
12 speech/communication. The staff did not
13 cite any other valid reason or purpose
14 for denying communication that is con-
15 stitutionally mandated to be allowed.

16 Nothing in the denial of com-
17 munication stated a legitimate safety, security,
18 or administrative concern of the MBCC /
19 O.D.B.C. Since the Deputy Warden effect-
20 ively set in stone, the basis of the
21 State of Oklahoma's / ODOC's litigation, the
22 Warden / Deputy Warden have shown
23 that there is not legitimate safety, security,
24 or administrative concern. There is no harm
25 in allowing legal correspondence between
26 both Petitioner and Ms. Hilberling, nor regular
27 correspondence. Both, Petitioner and Ms. Hilb-

erling are entitled to their Federal Constitutional rights to Communicate under the First Amendment to the U.S. Constitution, and thereafter Access To The Courts and Petition the Government by way of that Communication, on this prong of the Turner test.

Nothing in the denial of correspondence stated that there was or was not a less restrictive means to allow communication/correspondence between Petitioner and Ms. Hilberling. Petitioner contends that it should be presumed that there is a less restrictive means, if the Warden (Deputy Warden cannot / did not state a legitimate need for the restrictive nature of the denial). This especially makes sense under these particular circumstances, because there is a less restrictive means-simply allow correspondence between Petitioner and Ms. Hilberling. If it is presumed that there was not a less restrictive means for correspondence, that would be overcome by the fact that there is a simple and less restrictive means to allow communication between Petitioner and Ms. Hilberling- which is to simply allow correspondence.

As stated for prong one /the first prong explanation, there are no legitimate safety, security, or administrative concerns for the MBCC, so the restriction on correspondence, whether presumed that there was or was not a less restrictive means to allow correspondence, is unconstitutional under the First Amendment. Petitioner contends that he and Ms. Hilberling are entitled to their federal Constitutional rights to Communicate, Access To The Courts, and petition The Government by way of that communication, on this prong of the Turner test.

Nothing in the denial of correspondence, shows that allowing petitioner and Ms. Hilberling to communicate would cause an undue hampering of prison resources, nor could it be. Prisoners are constitutionally entitled to writing supplies also under the First Amendment, so the MBCC would expend no more than it already is required to under its First Amendment obligation. Furthermore, the MBCC administration would not be doing any more work than it is required to. Lastly, it is believed that Ms. Hilberling

1 purchases her own writing supplies, saving
2 the prison money, and even contributing
3 to the prison resources. Petitioner contends
4 that he and Ms. Hilberling are entitled
5 to their Federal Constitutional rights to
6 Communicate, Access To The Courts, and Peti-
7 tion the Government by way of that
8 Communication, on this prong of the
9 Turner test.

10 Nothing in the denial of cor-
11 respondence shows that prison staff would
12 be unduly distracted / taken away from
13 their regular assigned positions / places within
14 the prison, or that allowing correspondence
15 between petitioner and Ms. Hilberling would
16 significantly effect staff or prisoners in
17 any way. The issue of correspondence ~~is~~ is
18 under the present circumstances is of
19 not little to no interest or effect on
20 staff or prisoners. Staff and prisoners
21 would continue their regular routines everyday
22 should this petition be granted. Petitioner
23 contends that he and Ms. Hilberling are
24 entitled to their Federal Constitutional rights
25 to Communicate, Access To The Courts, and
26 Petition The Government by way of that
27 Communication, on this prong of the Turner test

1 Lastly, nothing in the denial
 2 of correspondence would set precedent for
 3 MBCC prisoners to "flood the ~~MBCC~~^{MBCC} ad-
 4 ministration with litigation" or otherwise
 5 "open the floodgates to litigation." The corre-
 6 spondence issue under the present circum-
 7 stances is of little to no interest to
 8 MBCC prisoners, at least directly. The little
 9 interest that there may be is due to
 10 correspondence of MBCC/ODOC prisoners being
 11 denied correspondence for the same rea-
 12 son as petitioner. Should the Court grant
 13 the petition, MBCC/ODOC prisoners, and
 14 even members of the public, will be
 15 able to communicate with each other
 16 without an unconstitutional impediment. The
 17 most that the prison administration would
 18 face, would be granting requests for corres-
 19 pondence and forwarding carbon copies where
 20 they need to go. Petitioner contends that
 21 he and Ms. Hilberling are entitled to
 22 their Federal Constitutional rights, to Commun-
 23 icate, Access To The Courts, and Petition
 24 the Government by way of that Comm-
 25 unication, on the /this last prong of the
 26 Turner test

27
 28 The Turner Court emphasized, " "

1 prison walls do not form a barrier se-
2 parating prison inmates from the protec-
3 tions of the Constitution." Turner v. Saf-
4 ley, 482 U.S. 78, 84 (1987). Accordingly, Petitioner
5 has First Amendment rights and 14th Amend-
6 ment rights that cannot be impeded me-
7 rely because he is a prisoner, especially
8 since the regulation/rule/policy/custom/practice
9 that is being used is invalid to begin
10 with. The staff of ODOC / MBCC are
11 not using a regulation that satisfies
12 the Turner test, or they are otherwise
13 not explaining how the regulation satisfies
14 the Turner test / or how the prongs
15 set out in Turner tip in their favor
16 / show a legitimate penological interest.
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7. Ground 2 or Ground

(if applicable):

ODOC/MBCC has/have An unconstitutional Policy/practice/Custom/Procedure That Denies First Amendment rights (see Ground 1), and Equal Protection under the 14th Amendment (U.S. Const.)

a. Supporting facts:

The Director/Interim Director of the ODOC, and Debbie Aldridge, Warden of MBCC, are official policymakers of the ODOC, and MBCC.

On or around February 10th, 2016, Petitioner sent his Correctional Counselor J. S. Dunaven a "Request For Correspondence Approval." It was granted, on the aforementioned date, and approved by the Facility Captain P. Santiago on ~~March 25th~~ February 25th, 2016.

On March 8th, 2016, the Deputy Warden denied correspondence approval citing "immediate family only."

Presumably, the Deputy Warden was

b. Supporting cases, rules, or other authority:

U.S. Const. - 14th Amend - Equal Protection Clause; City of Oklahoma v. Tuttle (1985) 471 U.S. 808; Monell v. N.Y.C. Dept. of Social Services (1978) 436 U.S. 658; Supremacy Clause of the U.S. Constitution; 18 U.S.C. §§ 2411-242

1 following Oklahoma's prison regulation(s)
2 for prisoner correspondence
3

4 The prison regulation denying
5 correspondence ~~unless someone is~~ unless someone is
6 "immediate family" is unconstitutional under
7 the First Amendment to the U.S. Constitution,
8 and the Equal Protection Clause under the
9 14th Amendment to the U.S. Constitution

10 The prison regulation denying
11 correspondence unless someone is "im-
12 mediate family" is used as a policy/practice/
13 custom/procedure, to deny individuals their
14 First Amendment and 14th Amendment
15 rights to the U.S. Constitution

16 The ODOC and MBCC have a
17 policy/practice/custom/procedure of using the
18 prison regulation denying correspondence un-
19 less someone is "immediate family," to deny
20 correspondence to individuals in violation of
21 the First and 14th Amendments to the
22 U.S. Constitution

23 The ODOC and MBCC have been,
24 and are using, an unconstitutional prison
25 regulation in conjunction with an uncon-

1 stitutional policy/practice/custom/procedure to
2 deny correspondence unless someone is ~~an~~
3 "immediate family," in violation of the First
4 and 14th Amendments to the U.S. Constitu-
5 tion

6 The ODOC and MBCC have used
7 the unconstitutional prison regulation in
8 conjunction with the unconstitutional policy/
9 practice/custom/procedure to deny correspon-
10 dence between Petitioner and Ms. Hilberling
11 in violation of the First and 14th Amend-
12 ments to the U.S. Constitution
13

14 The ODOC and MBCC are using
15 the unconstitutional prison regulation in
16 conjunction with the unconstitutional po-
17 licy/practice/custom/procedure to deny corre-
18 spondence between Petitioner and Ms. Hilberling
19 in a continuing manner, in violation of
20 the First and 14th Amendments
21

22 The ODOC and MBCC have used,
23 and are using, the unconstitutional prison
24 regulation, independently, and in conjunction with
25 the unconstitutional policy/practice/custom/procedure
26 in a manner that does not satisfy the
27 test set out in Turner v. Safley
28

1 The Director/Interim Director and
2 Warden of MBCC/Deputy Warden of MBCC,
3 as official policymakers have participated in,
4 directed, and failed to prevent constitutional
5 violations of Petitioner's First and 14th Amer-
6 nendment rights by authorizing the use of
7 the unconstitutional prison regulation, independen-
8 tly, and in conjunction with, the unconstitut-
9 ional policy/practice/custom/procedure to deny
10 Petitioner and Ms. Hilberling correspondence or
11 otherwise deny Petitioner correspondence with
12 Ms. Hilberling

13 The Director/Interim Director and
14 MBCC Warden have discriminately applied
15 the already discriminate^{is} mate regulation, indepe-
16 ndently, and in conjunction with, the uncon-
17 stitutional policy/practice/custom/procedure, by
18 allowing the "Dr. Phil" show to corresp-
19 ond with Ms. Hilberling, around late 2015
20 to early 2016 sometime

21 The unconstitutional prison regulation,
22 independently, and in conjunction with, the
23 unconstitutional policy/practice/custom/procedure
24 denies Petitioner, Amber Hilberling, and The
25 People of the United States, as a whole,
26 their First and 14th Amendment rights

8. Did you appeal from the conviction, sentence, or commitment? Yes No If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Division of Superior Court"):

b. Result: _____ c. Date of decision: _____

d. Case number or citation of opinion, if known: _____

e. Issues raised: (1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal? Yes No If yes, state the attorney's name and address, if known:

9. Did you seek review in the California Supreme Court? Yes No If yes, give the following information:

a. Result: _____ b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

N/A

11. Administrative review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500.) Explain what administrative review you sought or explain why you did not seek such review:

Petitioner did not have to exhaust any remedies because his request for correspondence approval was granted/approved by his CCI and the supervisor of his CCI. Amber Hilberling did not exhaust remedies, as far as Petitioner is aware. The CDCR administrative appeal system is unavailable to Petitioner. The CDCR 602 appeal system

b. Did you seek the highest level of administrative review available? Yes No
Attached documents that show you have exhausted your administrative remedies.

1 does not allow for the appeal of an
 2 administrative appeal's decision of another
 3 state's department of corrections. CCR
 4 does not supply administrative appeal forms
 5 and/or rules and regulations for other
 6 state's departments of corrections, or else
 7 petitioner would have pursued available obtain-
 8 able remedies to exhaust the ODOC's
 9 administrative appeal process.*

10 Since Ms. Hilberling was unknow-
 11 ing that petitioner was requesting/had
 12 requested correspondence approval, there
 13 was no reasonable expectation that she
 14 would appeal the denial for correspondence
 15 approval. She did not really know peti-
 16 tioner a lot/at all, but whether she com-
 17 responded with petitioner was her choice to
 18 make, not the ODOC's/MBCC's. Had Ms.
 19 Hilberling somehow been aware that pet-
 20 itioner was attempting to seek legal
 21 information and advice from her, its very
 22 likely she would have appealed the den-
 23ial by MBCC for correspondence approval.

24 As explained above, the ODOC's
 25 administrative appeal system is unobtainable.
 26 CCCR does not supply ODOC administrative

*See, e.g., Rosenthal v. Malcolm, 105 F.2d 559, 560 (the mere possession by some
 official body of a continuing supervisory or investigatory power does not, itself,
 suffice to afford an administrative remedy unless the statute or regulation
 under which that power is exercised establishes clearly defined machinery for
 the submission, evaluation, and resolution of complaints by aggrieved parties)

1 appeal forms, rules, or regulations. There was
 2 absolutely no way for Petitioner to appeal
 3 the administrative decision denying Petitioner
 4 correspondence approval for Ms. Hilberling.*
 5

6 Even though Petitioner explains
 7 why he could not exhaust ODOC adminis-
 8 trative appeal remedies, he nonetheless con-
 9 tends that since he is alleging the
 10 prison regulation to be unconstitutional, as
 11 well as the policy/practice/custom/procedure
 12 in using the prison regulation to deny
 13 Petitioner's Amber Hilberling, and The People of
 14 the United States their First and 14th
 15 Amendment rights as stated in this
 16 petition, he does not have to exhaust.
 17 Should the Court find that the ODOC's
 18 /MBCC's prison regulation is invalid/uncon-
 19 stitutional, the Warden/Deputy Warden's
 20 decision will be void, showing that they
 21 never had any lawful authority to deny
 22 correspondence to begin with, at least for
 23 that basis/reasoning of "immediate family
 24 only."

25 The ODOC's/MBCC's, prison regulat-
 26 ion is seemingly "underground"** in nature,
 27 along with APL policy/practice/custom/procedure
 28 *See Williams v. Paranya (9th Cir. 2015) 775 F.3d 1182; Hlaor v. Estate of Ma-
 rcos (9th Cir. 1996) 103 F.3d 767, 778 n.5; see 5 U.S.C. §500 et seq.

1 implementing / applying the unconstitutional
2 prison regulation* Even if it was passed
3 by the Oklahoma Administrative Procedures
4 Act, the Oklahoma Legislature and Office
5 of Administrative Law passed a regulation
6 that exceeded / exceeds their authority under
7 and discriminates under the U.S. Constit-
8 ution's Equal Protection Clause under the
9 14th Amendment. Since ~~it's~~ the prison
10 regulation may be being applied using an
11 "underground" policy / practice / custom / procedure, Petition-
12 er does not have to exhaust remedies.

13
14 Accordingly, Petitioner respectfully
15 requests that the Court waive the
16 exhaustion requirement, or at least order
17 service on respondent(s) to say what
18 remedies are available to Petitioner

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*See 5 U.S.C §500 et. seq.

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? Yes If yes, continue with number 13. No If no, skip to number 15.

13. a. (1) Name of court: _____

(2) Nature of proceeding (for example, "habeas corpus petition"): _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (attach order or explain why unavailable): _____

(5) Date of decision: _____

b. (1) Name of court: _____

(2) Nature of proceeding: _____

(3) Issues raised: (a) _____

(b) _____

(4) Result (attach order or explain why unavailable): _____

(5) Date of decision: _____

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

N/A

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949)

34 Cal.2d 300, 304.)

The delay is due to petitioner's transfer to SATF, SATF's retainment of his property, and there-

16. Are you presently represented by counsel? Yes No If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? Yes No If yes, explain:

In, the California State Courts and federal Eastern District Court

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

This is the proper court

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date:

[Signature]
(SIGNATURE OF PETITIONER)

Attachment 15

1 after the CDCR officers taking a
2 large quantity of petitioner's documents (legal)
3 in CTF's receiving and release, then
4 in SATF's receiving and release. On
5 top of all of that petitioner has
6 a lot of litigation that was going
7 on, and is still going on, in the
8 California state courts, and federal,
9 Eastern District Court in Sacramento,
10 California.

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Exhibit 1

STATE OF CALIFORNIA
DEPARTMENT OF CORRECTIONS AND REHABILITATION
REQUEST FOR CORRESPONDENCE APPROVAL
Form 9074 (REV. 08/08)

FR: <u>Shawn Hattori</u>		TO: <u>Debbie Aldridge</u>	
TITLE: <u>Warden</u>		TITLE: <u>Warden</u>	
INSTITUTION/PAROLE REGION: <u>Correctional Training Facility</u>		INSTITUTION/PAROLE REGION: <u>Mabel Bassett Correctional Center</u>	
ADDRESS: <u>Highway 101 North</u> <u>Soledad, CA 93960</u>		ADDRESS: <u>29501 Kickapoo Road</u> <u>McCloud, CA 97485</u>	
1. INMATE/PAROLEE REQUESTING TO CORRESPOND: <u>Larry A. Sernene</u>		2. INMATE/PAROLEE UNDER YOUR JURISDICTION: <u>Amber Hilberling</u>	
CDC NUMBER <u>AW24120</u>	CURRENT STATUS <input checked="" type="checkbox"/> INMATE <input type="checkbox"/> PAROLEE	CDC NUMBER <u>DOC # 672250</u>	CURRENT STATUS <input checked="" type="checkbox"/> INMATE <input type="checkbox"/> PAROLEE
KNOWN GANG AFFILIATION(S): <u>None</u>		KNOWN GANG AFFILIATION(S): <u>None known</u>	
MISCELLANEOUS INFORMATION/COMMENTS: <u>For Legal Matters</u> <u>Pursuant to Johnson v.</u> <u>Avery (1968) 393 U.S. 483</u>			
MISCELLANEOUS INFORMATION/COMMENTS: <u>For Legal Matters pers.</u> <u>to Johnson v. Avery</u> <u>(1968) 393 U.S. 483</u>			
COUNSELOR/AGENT'S RECOMMENDATION: <input checked="" type="checkbox"/> APPROVED <input type="checkbox"/> DENIED for the following reason: <u>No Reason to Deny</u>		COUNSELOR/AGENT'S RECOMMENDATION: <input type="checkbox"/> APPROVED <input checked="" type="checkbox"/> DENIED for the following reason: <u>I am immediate family only.</u>	
COUNSELOR/AGENT'S SIGNATURE: 	DATE: <u>2/16/16</u>	COUNSELOR/AGENT'S SIGNATURE: 	DATE: <u>3-8-16</u>
COUNSELOR/AGENT'S NAME (TYPED OR PRINTED): <u>S. Dunaven</u>		COUNSELOR/AGENT'S NAME (TYPED OR PRINTED): <u>Debbie Aldridge</u>	
SUPERVISING AUTHORITY'S DECISION: <input checked="" type="checkbox"/> APPROVED <input type="checkbox"/> DENIED for the following reason: _____		SUPERVISING AUTHORITY'S DECISION: <input type="checkbox"/> APPROVED <input checked="" type="checkbox"/> DENIED for the following reason: <u>I am immediate family only.</u>	
SIGNATURE: 	DATE: <u>2-25-16</u>	SIGNATURE: 	DATE: <u>3-8-16</u>
TITLE: <u>Captain</u>		TITLE: <u>Deputy Warden</u>	
INSTRUCTIONS: If request is denied, note reason and notify inmate/parolee #1 If request is approved by requesting facility, retain pending copy and forward request to inmate parolee #2's supervising authority.		INSTRUCTIONS: Receiving facility to retain last two copies (1 for inmate/parolee, 1 for inmate/parolee's file and return to requesting facility).	
DISTRIBUTION: (After processing): Original - Inmates/Parolee #1's File Copy - Inmates/Parolee #1 Copy - Inmates/Parolee #2's File Copy - Inmates/Parolee #2 Copy - Retained by requesting facility until process completed.			

1 To: Clerk of the Court
2

3 U.S. District Court
4

5 Northern District of California
6

7 450 Golden Gate Ave, Box 36000
8

9 San Francisco, CA 94102-3483
10

11 Re: Civil Rights Complaints
12

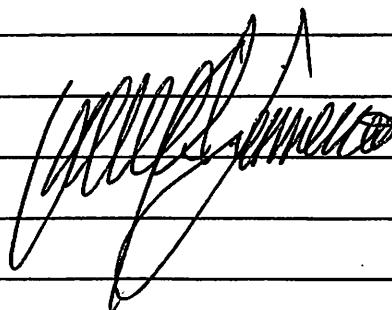
13 Subject: Originals and Copies
14

15 Dear Clerk:

16 Please find four original complaints
17 and two copies for each, with the ex-
18 ception of "Larry A. Serrano v. Oklahoma
19 Department of Corrections" There is one
20 copy included for that only, because
21 the law library ~~had~~^{the} clerk made a mist-
22ake as to the copies for that. For
23 service on all defendants, to save the
24 Court's time and resources, I would like
25 to have the all of the defendants served
26 by publication pursuant to Cal. Code of Civl
27 Proc. § 415.50. As I am a prisoner, it's the
most expeditious manner. Your assistance
with this matter is greatly appreciated.
28

Respectfully,

Dated: 10/2/16



Larry A. Cermenio